

DAVID A. HUBBERT
Acting Assistant Attorney General

BORIS KUKSO (CA State Bar #268613)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
202-353-1857 (v)
202-307-0054 (f)
Boris.Kukso@usdoj.gov

Of Counsel:
BILLY J. WILLIAMS
US Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:	)	Case No. 16-33185
	)	Chapter 11
)	
PETER SZANTO,	)	UNITED STATES' OPPOSITION TO
	)	CONFIRMATION OF CHAPTER 11 PLAN
Debtor.)	
_____)	

The United States of America, on behalf of the IRS, hereby files this opposition to confirmation of Debtor's proposed Chapter 11 plan dated May 8, 2017 and filed as ECF No. 102 (the Plan). This opposition is supported by the declaration of Bankruptcy Specialist Philip Kushner, the declaration of the Trial Attorney Boris Kukso and exhibits thereto.

BACKGROUND

This case was filed on August 16, 2016. On his schedules, Debtor represented that he and his spouse, pursuant to a pre-marital agreement, have "neither produced nor accumulated joint/community/shared or combined property of any type." ECF No. 20 at

UNITED STATES' OPPOSITION TO CONFIRMATION OF
CHAPTER 11 PLAN

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24. Debtor also stated that his monthly income is \$12,097, consisting of rents received from his wife, stock trading, social security and jewelry/farrier activities. *Id.*, at 26. Initially, Debtor stated that his monthly expenses exceeded his monthly income by \$8,995. *Id.*, at 29. On April 1, 2017, Debtor amended his Schedules I and J, this time stating that his monthly income is \$10,047 and his expenses \$1,690, leaving a monthly surplus of \$8,357. ECF No. 88.

The IRS timely filed a proof of claim, which has been amended from time to time to reflect court-approved monthly payments. Currently, the total amount of the IRS claim is \$68,549.14, of which \$32,877.59 is entitled to priority. Claim No. 3, as amended. The Plan classifies the entire IRS claim into its own class (Class 3) and proposes to pay it in full by making monthly payments of \$468.

OBJECTIONS TO PLAN

Debtor Is Not In Compliance With His Duties As Debtor-In-Possession, and the Plan Has Not Been Proposed In Good Faith

The United States has moved to convert this case or to appoint a trustee because Debtor, among other things, failed to disclose prepetition assets, maintained and used undisclosed bank accounts postpetition, and misrepresented the estate's financial affairs in the Monthly Operating Reports. ECF No. 185. The final evidentiary hearing on this motion is scheduled for the same time as the confirmation, November 29, 2017. ECF No. 213. The United States incorporates the allegations made in the motion to convert as objections to Debtor's Plan.

Debtor has taken additional recent steps indicating that the Plan has not been proposed in good faith. Specifically, last month Debtor has filed four proceedings to quash subpoenas issued pursuant to this Court's Rule 2004 order (ECF No. 189) (Cases No. 2:17-mp-113 and 17-mp-114 in the Bankruptcy Court for the Central District of California, Case No. 2:17-mp-109 in Bankruptcy Court for the District of New Jersey, and

Case No. 3:17-mp-301 in the Bankruptcy Court for the Southern District of Ohio). The subpoenas seek bank statements from ETrade, Cathay Bank, Western Pacific Bank, and Synchrony Bank for accounts in which Debtor may have an interest. The information sought is directly related to Debtor's estate and the Plan. At the same time, Debtor has not responded to US Trustee's requests for his bank statements. *See* Debtor's motion to stay all proceedings, ECF No. 233.

Also, in August 2017, Debtor created a new Florida entity Portland Trust Corp. Kukso Decl. ¶ 2, Ex. 1. At the same time, Debtor created an Oregon entity Peter Szanto LLC. *See* ECF No. 185 at 9, Ex. 10. Debtor has disclosed neither entity to this Court.

These activities, taken together with the facts alleged in the motion to convert, indicate that the Plan is not proposed in good faith.

The Plan Is Misleading

The United States objects to confirmation because the Plan language is misleading in a number of places.

The Plan states that it "is intend[sic] as the contract between the parties which will address **all** of debtor's indebtedness." ECF No. 102 at 2 (emphasis in the original). This is misleading because the Plan does not and cannot address all of debtor's liabilities. Specifically, the Plan does not address Debtor's postpetition liabilities, including any postpetition tax liabilities. Neither does it address any prepetition tax liabilities that have not been assessed, but may be assessed (*see* 11 U.S.C. §§ 523(a)(1)(A) and 507(a)(8)(A)(iii), providing for priority and exception to discharge for tax liabilities not assessed before, but assessable after the commencement of the case). Additionally, the statement that the Plan will address all of debtor's indebtedness mischaracterizes the effect of confirmation as specified in 11 U.S.C. § 1141.

The Plan is also misleading in its discussion of the IRS Claim, where the Plan states:

UNITED STATES' OPPOSITION TO CONFIRMATION OF
CHAPTER 11 PLAN

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Debtor and the IRS have entered into an agreement wherein debtor, pre-petition and post-petition, has continued and will continue making monthly payments in full payment of the IRS' claimed demands. Debtor has been advised by the IRS that the \$468.00 / month that he is paying is the highest monthly payment which a taxpayer can make. Debtor has been informed that the IRS has no plans to increase this amount.

ECF No. 102 at 8.

Debtor and the IRS have not entered into any agreement as described, and \$468 is not the highest monthly payment which a taxpayer can make. In this case, all assessed liabilities asserted on the IRS proof of claim are due and payable immediately.

Finally, the Plan is misleading in its discussion of IRS' remedies on default, where it states:

Creditor Internal Revenue Service has complete seizure and foreclosure powers as to all of debtor's assets. Debtor has sufficient cash and personal assets, unrelated to real property, immediately to pay any IRS demand. Additionally, if this Court or the Tax Court determines that debtor has exhausted all of his legal remedies, debtor will immediately the IRS in full. [sic]

ECF No. 102 at 13.

It is unclear what this provision means, but it does not provide a clear description of IRS's remedies in case Debtor defaults under the plan.

The Plan Incorrectly States That The Tax Claim Is Unimpaired

The Plan incorrectly states that "No impairment of any valid debt is proposed nor requested." ECF No. 102 at 5. This is not the case in respect to the class containing the IRS claim. Section 1124 defines "impairment" broadly and provides that a class of claims is impaired unless "the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1124(1). The Seventh Circuit has stated that the "standard for impairment is very lenient and 'any alteration of the rights constitutes impairment even

if the value of the rights is enhanced.’” *In re Wabash Valley Power Assoc., Inc.*, 72 F.3d 1305, 1321 (7th Cir.1995) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1124.03[1] (15th ed. 1994)).

Here, the Plan classifies both the priority and the general unsecured IRS claim into one class, but does not leave the United States’ legal rights on account of its general unsecured tax claim unaltered. The currently assessed liabilities asserted on the IRS proof of claim are due and owing, and the United States’ legal rights in respect to those taxes is to receive immediate payment. Instead, the Plan proposes payment of the IRS claim over 12 years and makes no provisions for payment of interest. Consequently, the class containing the IRS claim is impaired under the Plan.

The Plan Does Not Comply with 11 U.S.C. § 1129(a)(9)(C)

The Plan cannot be confirmed because it incorrectly treats the priority IRS claim. A plan of reorganization cannot be confirmed unless the plan provides that priority tax claims are to receive payment in full or regular cash payments, over a period not exceeding five years from the date of the order of relief, with a value as of the effective date of the plan equal to the allowed amount of such claim (or the claimant agrees to a different treatment). 11 U.S.C. § 1129(a)(9)(C). This requirement is not met in this case.

First, the United States has not agreed to any different treatment for its priority tax claims.

Second, the \$468.00 per month proposed under the Plan does not pay the tax priority claim (currently \$32,877.59) over a period not exceeding five years from the date of the order for relief in this case.

Third, the Plan does not provide for postconfirmation interest on the tax priority claim.

The Plan Does Not Meet the Best Interest Of Creditors Test

For the reasons stated above, the class containing the IRS claim is impaired. Section 1129(a)(7) provides that each holder of an impaired claim who has not accepted a plan must “receive or retain under the plan on account of such claim ... property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive ... if the debtor were liquidated under chapter 7 ... on such date.” 11 U.S.C. § 1129(a)(7)(A)(ii). This requirement is commonly known as the best interest of creditors test. *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 (1999).

Here, the United States has not accepted the Plan, and the Plan does not provide for payment of any interest on the IRS claim. If this case were converted to Chapter 7, because Debtor appears to be solvent, the IRS claim would be paid in full, including postpetition interest. See 11 U.S.C. § 726(a)(5). Because the Plan does not provide for payment of interest on the IRS Claim, the United States would receive under the Plan less than it would in a hypothetical Chapter 7 liquidation, and therefore the Plan does not meet the best interest of creditors test.

The Plan Is Not Feasible

The Plan should not be confirmed because it is not feasible. Section 1129(a)(11) requires that the court find that confirmation “is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11). “Factors that the court should consider in evaluating evidence as to feasibility include (1) the adequacy of the financial structure; (2) the earning power of the business; (3) economic conditions; and (4) the ability of management.” *In re WCI Cable, Inc.*, 282 B.R. 457, 486 (Bankr. D. Or. 2002) (quotation marks and citations omitted).

In this case, all indications are that Debtor will not be able to fund the Plan. First, on his 2016 tax return, which he filed jointly with with his spouse, Debtor's reports income that is significantly less than what would be sufficient to fund the Plan. Kushner Decl. ¶¶ 3-4. Specifically, Debtor reports less than \$43,000 in income (consisting primarily of \$23,830 in wages earned by his wife, \$11,227 in social security payments for both him and his wife, and about \$7,000 in interest and dividends) and about \$5,500 in business losses. *Id.* These figures are substantially lower than \$16,000 per month required to fund the Plan.

Second, the Plan is not feasible because Debtor's current and future tax liabilities are undetermined. Although this case has been pending since August 2016, Debtor has filed no tax returns for the estate and has requested a 6 month extension for the first return. Kushner Decl. ¶ 5.

Third, the Plan is not feasible because Debtor is likely to lose income after his divorce. Debtor has indicated that he is separating from his wife. Consequently, Debtor's income is likely to decrease, because he will not have access to his wife's salary and social security payments, and may have additional expenses related to the divorce proceedings and any support payments.

Fourth, the Plan is not feasible because there is no evidence when Debtor will be able to rent his California residence or how much income the rental will bring.

Fifth, the Plan is not feasible because there is no evidence that Debtor's new career in equine health care or his planned book regarding pioneer sites and historical campgrounds along the Oregon trail will be profitable. In fact there are indications to the contrary, as Debtor recently had cancer surgery so that "travel anywhere is extremely arduous for him." Kukso Decl. ¶ 3, Ex. 2 at 3. Debtor is also undergoing debilitating chemo therapy.

WHEREFORE, the United States requests that the Court deny confirmation of Debtor's Plan dated May 8, 2017 (ECF No. 102).

November 15, 2017.

DAVID A. HUBBERT
Acting Assistant Attorney General

/s/ Boris Kukso
BORIS KUKSO (CA State Bar #268613)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
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Boris.Kukso@usdoj.gov

Of Counsel:
BILLY J. WILLIAMS
US Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2017, I electronically filed the foregoing UNITED STATES' OPPOSITION TO CONFIRMATION OF CHAPTER 11 PLAN with the Clerk of Court using the CM/ECF system and caused the same document to be mailed by United States Postal Service to the following:

Peter Szanto
P.O. Box 4614
Portland OR 97208

/s/ Boris Kukso
BORIS KUKSO
Trial Attorney
United States Department of Justice, Tax
Division

DAVID A. HUBBERT
Acting Assistant Attorney General

BORIS KUKSO (CA State Bar #268613)
Trial Attorney, Tax Division
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Of Counsel:
BILLY J. WILLIAMS
US Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:	)	Case No. 16-33185
	)	Chapter 11
PETER SZANTO,)	
)	
<u>Debtor.</u>)	
	)	Adv. Proc. No. 16-3141
PETER SZANTO,)	
)	
Plaintiff,	)	DECLARATION OF BANKRUPTCY
	)	SPECIALIST PHILIP KUSHNER
v.)	
)	
UNITED STATES,)	
)	
<u>Defendant.</u>)	

I, PHILIP KUSHNER, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am presently employed as a Bankruptcy Specialist at the Internal Revenue Service.

My post of duty is in Portland OR.

DECLARATION OF BANKRUPTCY SPECIALIST PHILIP
KUSHNER

(Case No. 16-33185; Adv. No. 16-3141)

1

U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
P.O. Box 683
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Telephone: 202-353-1857

2. In my capacity as a Bankruptcy Specialist, I have access to and am familiar with IRS records and have reviewed Mr. Peter Szanto's transcripts for the tax year 2016 and 2017.
3. Mr. Szanto filed a joint US Individual Income Tax Return (Form 1040) for 2016 jointly with Susan Szanto.
4. On his Form 1040, Mr. Szanto reported the following income:

Item No.	Description	Amount
7	Wages, Salaries, etc.	\$23,830
8	Taxable Interest	\$4,766
9	Ordinary Dividends	\$2,627
10	Refunds of state and local taxes	\$212
12	Business income or (loss)	(\$2,516)
13	Capital gain or (loss)	(\$3,000)
17	Rental real estate, royalties, partnerships, S Corp, trusts, etc. income or (loss)	(\$317)
20a	Social security benefits	\$11,227

5. Mr. Szanto filed an Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns (Form 7004) for his Chapter 11 bankruptcy estate, seeking an extension of 6 months to file the estate's initial tax return. The application was received on November 8, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 15, 2017.

Philip A. Kushner
 cn=Philip A. Kushner, o=United States Treasury, Internal
 Revenue Service, ou=IRS Insolvency,
 email=Philip.A.Kushner@irs.gov, c=US
 2017.11.15 07:36:52 -08'00'

PHILIP KUSHNER
 Bankruptcy Specialist

DECLARATION OF BANKRUPTCY SPECIALIST PHILIP
 KUSHNER

(Case No. 16-33185; Adv. No. 16-3141)

2

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Of Counsel:
BILLY J. WILLIAMS
US Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:	)	Case No. 16-33185
	)	Chapter 11
)	
PETER SZANTO,	)	DECLARATION OF TRIAL ATTORNEY
	)	BORIS KUKSO
Debtor.)	
_____)	

I, BORIS KUKSO, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am presently employed as a Trial Attorney at the Department of Justice, Tax Division. My post of duty is in Washington DC.
2. Attached as Exhibit 1 are true and correct copy of documents I obtained from the State of Florida Division of Corporations web page.

//

//

DECLARATION OF TRIAL ATTORNEY BORIS KUKSO

(Case No. 16-33185)

1

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Washington, D.C. 20044
Telephone: 202-353-1857

3. Attached as Exhibit 2 is a true and correct copy of ECF No. 6 filed in Case No. 8:17-cv-920-JSM in the US District Court in the Middle District of Florida.

Dated: November 15, 2017.

/s/ Boris Kukso
BORIS KUKSO
Trial Attorney
Dept. of Justice, Tax Division

DECLARATION OF TRIAL ATTORNEY BORIS KUKSO

(Case No. 16-33185)

2

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EXHIBIT 1



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Florida Profit Corporation
PORTLAND TRUST CORP.

Filing Information

Document Number	P17000069888
FEI/EIN Number	NONE
Date Filed	08/21/2017
State	FL
Status	ACTIVE

Principal Address

1490 - 31ST ST
POMPANO BEACH, FL 33069

Mailing Address

PO BOX 14894
IRVINE, CA 92623

Registered Agent Name & Address

SZANTO, P
1490 31ST ST
POMPANO BEACH, FL 33069

Officer/Director Detail

Name & Address

Title TRES

SZANTO, P
PO BOX 14894
IRVINE, CA 92623

Title P

SZANTO, J
11 SHORE PINE
NEWPORT COAST. CA 92657

Title VP

SZANTO, S
11 SHORE PINE
NEWPORT COAST, CA 92657 UN

Annual Reports

No Annual Reports Filed

Document Images

[08/21/2017 -- Domestic Profit](#)

View image in PDF format

**Electronic Articles of Incorporation
For**

P17000069888
FILED
August 21, 2017
Sec. Of State
cmwood

PORTLAND TRUST CORP.

The undersigned incorporator, for the purpose of forming a Florida profit corporation, hereby adopts the following Articles of Incorporation:

Article I

The name of the corporation is:
PORTLAND TRUST CORP.

Article II

The principal place of business address:
1490 - 31ST ST
POMPANO BEACH, FL. 33069

The mailing address of the corporation is:
PO BOX 14894
IRVINE, CA. 92623

Article III

The purpose for which this corporation is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The number of shares the corporation is authorized to issue is:
100

Article V

The name and Florida street address of the registered agent is:
P SZANTO
1490 31ST ST
POMPANO BEACH, FL. 33069

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: P SZANTO

Article VI

The name and address of the incorporator is:

J SZANTO
11 SHORE PINE

NEWPORT COAST CA 92657

Electronic Signature of Incorporator: J SZANTO

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: TRES
P SZANTO
PO BOX 14894
IRVINE, CA. 92623

Title: P
J SZANTO
11 SHORE PINE
NEWPORT COAST, CA. 92657

Title: VP
S SZANTO
11 SHORE PINE
NEWPORT COAST, CA. 92657 UN

EXHIBIT 2

PETER SZANTO 949-887-2369
P. O. Box 14894
Irvine CA 92623

United States District Court
in and for the Middle District of Florida
801 N. Florida Av., Tampa FL 33602

Peter SZANTO

APPELLANT, PLAINTIFF

VS.

Alyce Jurgens-Schenk

APPELLEE, DEFENDANT

8:17-cv-920-T-30

Appeal from US Bankruptcy Court –
Middle Dist FL 8:15-bk-1263

Appellant's Motion
for Permission to
File Electronically

Hon Judge Moody

May it please this Honorable Court - comes now appellant seeking approval of Electronic Filing privileges and privilege to receive filings by e-mail.

1. Appellant's Petition for Permission to File Electronically

Appellant, Peter Szanto, proceeding *in pro se* hereby prays this Court's permission to allow him to file papers electronically via the court's ECF system.

17-cv-920

Appellant's Motion to File Electronically – pg. 1

FILED
MAY 17 AM 11:35
U.S. DISTRICT COURT
TAMPA, FLORIDA
05/16/17

1
2 There are three motivations here for electronic filing. 1) urgency - so
3 that this case move forward more quickly by prompt filings which avoid mail
4 and transit delays; 2) efficiency – by electronic filing, contra party receives
5 immediate notice and can begin immediately to respond; 3) conservation –
6 by electronic filing mailing costs are saved and paper product resources
7 need not be expended unnecessarily.

8
9 Appellant resides 3000 miles away from the U.S. District Courthouse
10 in Tampa. Any deadline imposed by this Court becomes more onerous
11 because it requires any document that is due to be placed in the mail three
12 or 4 days in advance so as to meet deadline demands imposed by the
13 physical transit of mail. Thus, appellant's time to prepare and perfect every
14 paper is effectively unnecessarily reduced, because of the transit time of
15 physical mail.

16
17 Any lateness (not caused by appellant) would necessitate additional
18 work from appellant (to make relief from lateness application), the clerks
19 (to process said application plus its copies) and the Court (to adjudicate
20 said lateness). That is, if through no fault of appellant an item arrived late –
21 additional work would be necessitated by appellant, the clerks and the
22 Court. All this potential unnecessary waste of everyone's time resources
23 can be avoided by grant of ECF permission.

1
2 Additionally, appellant is recuperating from recent cancer surgery.
3 Travel **anywhere** is extremely arduous for him. Therefore, any unnecessary
4 trip which can be avoided (such as to the post office) is a benefit. Such a
5 benefit will arise from the grant of the electronic filing privilege to appellant.
6

7
8 Appellant has electronic filing privileges in Florida's courts where the
9 parties dispute originated prior to appellee seeking Bankruptcy protection.
10 Appellant has used that privilege without any reprimand or error or
11 difficulties.
12

13
14 Appellant reviewed the policies and procedures with this Court's
15 e-filing clerks and is confident he knows and understands all the rules.
16

17
18 Appellant has reviewed the computer hardware and software
19 requirements and protocols for electronic filing in this Court. Appellant
20 believes his good electronic filing performance with Florida's Courts,
21 demonstrates that he comprehends and abides the rules. Appellant is
22 versant in all the computer skills necessary successfully to file papers
23 electronically. Appellant regularly attends computer training and skills
24 improvement workshops and seminars – online and in person – to hone
25 and further improve his computer expertise.
26

1
2 Appellant is a candidate for the California State Bar (who has
3 previously passed all portions of the examination except the essay portion).
4 Appellant has previously been a clerk at the United States District Court in
5 Atlanta, the California Superior Court and also a research assistant at the
6 California Court of Appeal. Appellant has familiarity with many Courts'
7 procedures and is aware of the protocols for proper filing, correct form of
8 papers and the necessity to maintain the integrity of court files.

9 Appellant has used PACER for approximately 25 years to assist him
10 with his real estate business [Appellant has been, and currently is, a
11 California Real Estate Broker.] (ie: Pacer assists appellant in ascertaining
12 bankruptcy and litigation profiles of clients). Appellant has knowledge of the
13 manner in which electronic files are maintained by the district and
14 bankruptcy courts. Appellant knows the proper manner in which to access
15 dockets, case histories and documents. Appellant has always promptly paid
16 his PACER bill!!

17
18 By this application, appellant assures the Court that he will not
19 abuse the ECF privilege. Appellant also guarantees to the Court that he will
20 use the ECF system only for the purposes necessary effectively to pursue
21 this appeal and successfully to prevail therein.

22
23 Respectfully,

24
25 Dated May 15, 2017



Peter Szanto

Proof of Service by Mail

My name is Maquisha Reynolds, I am over 18 years of age and not a party to the within action. My business address is P.O. Box 10451, Newport Beach CA 92658. On the date indicated below, I personally served copies of the within:

MOTION

I inserted copies of the within documents in envelopes, sealed said envelopes, affixed thereto sufficient postage to insure delivery by 1st class mail. I addressed those envelopes as:

1) Richard Ellis

3202 N. Tamiami Trail

Sarasota FLA 34234

2) Alyce Jurgens-Schenk

68 St. Lucie Ave.

Sarasota FL 34232

I then deposited the envelope containing the within documents into the United States mail at Newport Beach CA.

I declare under penalty of perjury under the laws of the state of the United States that the foregoing is true and correct, signed at Irvine CA.

DATED 5-15/ 2017

Maquisha Reynolds